

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

RIVERSIDE DIVISION

In re

Wilbert Mauricio Henriquez

Debtor(s).

Case No.: 6:16-bk-11051 -MW

Chapter: 7

Adv. No: 6:16-ap-01072

Vokshori Law Group, APLC,

Plaintiff(s),

v.

Wilbert Mauricio Henriquez

Defendant(s).

MEMORANDUM DECISION AND ORDER

Date: October 4, 2016

Time: 9:00 a.m.

Place: 411 West Fourth Street
Courtroom 6C
Santa Ana, CA 92701

This adversary proceeding came on for trial on October 4, 2016 to determine whether a debt allegedly owed to plaintiff Vokshori Law Group, A Professional Law Corporation ("Plaintiff") by defendant-debtor Wilbert Mauricio Henriquez ("Defendant") is excepted from discharge pursuant to 11 U.S.C. §§

523(a)(2)(A) and/or 523(a)(2)(C)(i)(I).

The Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157, 1334 and General Order No. 13-05, filed July 1, 2013, of the United States District Court for the Central District of California. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B), (I).

On the record, each of Plaintiff and Defendant consented to this Court's final determination of this matter under the rule of *Stern v. Marshall*, 564 U.S. 462, 131 S. Ct. 2594 (2011) and *Wellness International, Ltd. v. Shariff*, 135 S. Ct. 1932 (2015) and waived any right to a jury trial.

FINDINGS OF FACT

This matter involves legal fees and expenses allegedly owed by Defendant to Plaintiff that were incurred in connection with failed efforts to modify a secured loan on real property located at 5937 Paramount Drive, Riverside, California owned by Defendant (the "Riverside Property"). Defendant's principal contention is that he does not owe these fees and expenses because the loan modification failed and it was agreed at the outset that fees and expenses would be payable only if the loan modification was successful. Plaintiff argues that the terms of the engagement clearly specified the fees and expenses were payable irrespective of whether the loan modification efforts succeeded or failed and, further, that the debt is excepted from discharge because (1) Defendant never intended to pay the fees and expenses charged by Plaintiff, even though promising to do so in writing and (2) the fees and expenses constitute "consumer debts . . . for luxury . . . services incurred by an individual debtor on or within 90 days before the order for relief" within the meaning of 11 U.S.C. § 523(a)(2)(C)(i)(I).

Defendant contacted Plaintiff's law office in or about February 2015 about engaging Plaintiff to obtain a loan modification with respect to the secured loan held by Bank of America on the Riverside Property. At that point in time he had not made a payment on the loan in approximately two years.¹ Defendant testified that Plaintiff's

¹ Defendant's Exhibit B, page 1 ("For informational purposes, our records indicate that the loan is paid through the March 2013 installment").

1 employee Phil Alvarez told him he wouldn't have to pay Plaintiff unless the loan
2 modification was successful.²

3 Plaintiff and Defendant decided to move forward with the engagement
4 and, on February 19, 2015 at 2:01 p.m. Pacific Time, Plaintiff electronically transmitted
5 to Defendant a 9-page Vokshori Law Group Legal Services Agreement (the "LSA") via a
6 software program named "DocuSign."³ The DocuSign print out shows that Defendant
7 viewed the LSA 47 minutes later at 2:48 p.m. and signed it about 90 minutes after
8 midnight the next day, February 20, 2015, at 1:28 a.m.⁴ The DocuSign program has a
9 feature for initialing on each page of a legal document, and this feature was deployed by
10 Plaintiff in its electronic transmission of the LSA to Defendant. Each and every one of
11 the nine pages of the LSA is initialed by Defendant.⁵

12 Numbered paragraph 3 of the LSA required Plaintiff to provide a long list
13 of loan modification-related services to Defendant occupying nearly a full page of the
14 LSA. Numbered paragraph 4 on page 3 of 9 sets forth the "TOTAL FEES" and required
15 Defendant to pay a flat fee of \$2,400 plus a monthly maintenance fee of \$249 per month
16 should the representation last longer than four months.

17 Immediately below the two paragraphs describing the flat fee of \$2,400
18 and the monthly maintenance fee of \$249 per month are the following provisions:

19
20 The Flat Fees and Monthly Maintenance Fees as described
21 above are owed to LAW FIRM irrespective of any outcome
or result.

22 Legal Fees Are Due Upon:

23 (1) An approval of a loan modification by CLIENT's lender;
24 (2) A rejection of a loan modification by CLIENT's lender; (3)
25 A cancellation by CLIENT of LAW FIRM's services; or (4) A
withdrawal of representation by LAW FIRM for reasonable
cause.

26 The Court regards the placement on the page of the two paragraphs quoted in full
27 immediately above as a matter of key importance. Anyone presented with this LSA

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² Reporter's Transcript ("RT") at page 109, lines 22-25, page 110, line 1.

³ Plaintiff's Exhibits 1 and 4.

⁴ Plaintiff's Exhibit 4. It appears the signature was made by Defendant using his finger on the screen of
the electronic device he used to view the LSA. RT at pages 33-34.

⁵ Plaintiff's Exhibit 1.

1 who wanted to see how much he would owe under the agreement would necessarily
2 have to look at numbered paragraph 4 on page 3 of 9 and at that point the two
3 paragraphs quoted in full above would be clearly in the field of vision. In other words,
4 for all practical purposes (excepting perhaps a severely visually impaired person) it
5 would be quite difficult to look at the LSA to determine how much one would owe for
6 Plaintiff's services without also seeing the LSA provisions indicating that the fees would
7 be owed "irrespective of any outcome or result" and, further, that the fees would be
8 payable if the loan modification were rejected.

9 Defendant initialed page 3 of 9 of the LSA.

10 As if this were not enough, numbered paragraph 7 on page 4 of 9, entitled
11 "DISCLAIMER OF GUARANTEE:", provides as follows: "Nothing in this Agreement
12 and nothing in LAW FIRM's, or its employees', statements to Client will be construed
13 as a promise or guarantee about the outcome of this matter. . . Client acknowledges
14 that Law Firm has made no promise or guarantees about the outcome." Defendant
15 also initialed this page.

16 On LSA page 8 of 9, numbered paragraph 15, entitled "IMPORTANT
17 NOTICES NOTICE REQUIRED BY LAW" sets forth in boldfaced large font text the
18 notice specifically required by California Civil Code section 2944.6 to be provided to a
19 borrower seeking loan modification services. This text essentially notifies a borrower
20 that it is not necessary to pay a third party to arrange for loan modification or
21 forbearance because the borrower can directly contact the lender or ask nonprofit
22 housing counseling agencies for help. Defendant also initialed page 8 of 9.

23 After the execution of the LSA by the client/borrower, the next step in the
24 engagement was to send the client/ borrower a list of documents to be provided to the
25 lender in connection with a loan modification request. Plaintiff's practice was to allow
26 for some time to pass and for the collection of documents from the client/borrower
27 before executing the LSA on Plaintiff's behalf. The LSA that comprises a portion of
28 Plaintiff's Exhibit 1 (and is also Defendant's Exhibit D) was manually signed by N.

1 Stephen Vokshori, Esq. on Plaintiff's behalf on June 1, 2015.

2 In the meantime, Plaintiff had been working to collect necessary
3 documents from Defendant. Email correspondence between Defendant and Plaintiff's
4 employees (set forth in Defendant's Exhibit A) show that on February 27, 2015 Plaintiff
5 sent Defendant a list of nine types of documents and requested him to "[p]lease work
6 on these documents and send them into the office as soon as possible. The quicker
7 we get your documents, the quicker we get to process your loan modification and the
8 faster we get you the help you need. Please make sure to send these documents at
9 the earliest time possible. . . Thank you so very much for your time."⁶

10 About one month later, on March 20, 2015, Plaintiff followed up with
11 another email again requesting six of the nine items previously requested. Three days
12 later, on March 23, 2015, Plaintiff followed up with yet another urgent request asking
13 Defendant to send in the itemized documents listed in the February 27 email. As of
14 July 1, 2015, after repeated additional emails, Plaintiff was still missing documents that
15 Defendant had been asked to provide over four months earlier, namely, his 2014 tax
16 returns.

17 A loan modification application was transmitted via fax by Plaintiff to Bank
18 of America on or about August 17, 2015. The application listed Defendant's mother,
19 Leonor Henriquez, as a co-borrower. An attachment indicated that she did not live on
20 the Riverside Property and did not contribute to household expenses. Bank of America
21 acknowledged receipt of the application by letter dated September 16, 2015.

22 Defendant apparently wanted to distance his mother from the loan
23 modification process. When Bank of America became aware of the issues, it
24 requested that Defendant furnish a quitclaim deed taking his mother off of title to the
25 Riverside Property. This additional complexity created further delay in the process.
26 Plaintiff took the position that preparing a quitclaim deed, obtaining the necessary
27 signatures and notarizations and recording the instrument were not included in the
28 services it had agreed to provide.

⁶ Defendant's Exhibit A, page 1.

1 By early fall 2015 Defendant was becoming increasingly frustrated with
2 Plaintiff. He sent an email on October 3, 2015 to Plaintiff's employee Anhel Farias that
3 reads in relevant part as follows:

4
5 So why do I have a lawyer with you guys and going to end
6 up paying you guys \$2400 for? Basically so you can just
7 send the lender my papers I fax to you guys . . . I found
8 someone else to do everything not just send to my lender
9 what I sent you . . . Tell your boss to take 15 mins. Of his
10 time to help me fill this out [i.e., the quitclaim deed]. Or I'm
11 going to hire someone else to do everything for less money.
12 **After my modification goes through I'm filing**
13 **bankruptcy so feel free to charge me anything you want**
14 **for something you guys haven't done. . .** [bold-faced type
15 added by the Court].

16 The relationship between Plaintiff and Defendant appears to have gone
17 from bad to worse at some point following this communication. There is a gap in the
18 email record introduced into evidence in the November/early December 2015 time
19 period. On December 16, 2015, Plaintiff's employee Anhel Farias sent an email to
20 Defendant informing him that "the lender closed out your loan modification application
21 for failure to provide the needed documents in a timely manner," that Plaintiff had
22 closed out his file and that "[a]s a friendly reminder, you still owe VLG fees for the work
23 performed over the past months regarding your loan modification."⁷

24 Defendant engaged bankruptcy counsel and filed a chapter 7 petition on
25 February 8, 2016. Indebtedness of \$3,894.00 to Plaintiff was scheduled as a disputed
26 general unsecured claim, incurred as of February 20, 2015 (the date Defendant signed
27 the LSA per DocuSign). Chapter 7 Petition, Docket No. 1, filed February 8, 2016 at
28 page 34 of 60.

Plaintiff timely commenced this adversary proceeding on March 22, 2016.
Defendant answered the complaint on April 22, 2016. The pretrial conference was
held on August 18, 2016.

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⁷ Defendant's Exhibit A, page 19.

CONCLUSIONS OF LAW

Plaintiff asks the Court to determine that Defendant's debt to Plaintiff of \$3,894.00 arising under the LSA is excepted from discharge under 11 U.S.C. § 523(a)(2)(A) and 11 U.S.C. § 523(a)(2)(C)(i)(I).

Defendant contends that Plaintiff should take nothing by his complaint for the following reasons: (1) there is no debt because the agreement between the parties is that Plaintiff is entitled to collect its fee only if a loan modification is successful, and the loan modification failed; (2) assuming arguendo that a debt exists, the debt is dischargeable because Defendant always intended to pay if the loan modification was successful; (3) Plaintiff loses because Plaintiff failed to properly provide the disclosures required by California Civil Code section 2944.6; and (4) Plaintiff loses because it did not fully perform each and every service it was required to perform under California Civil Code section 2944.7 – and therefore cannot legally charge Defendant because one of the services it was required to perform was obtaining a loan modification, and this never occurred. (Regarding item (3), the Court notes that Defendant cites no authority for the proposition that a failure to comply with section 2944.6 results in a forfeiture of fees – as opposed to the imposition of criminal sanctions – but as it turns out this is not of great moment in the case).

1. Defendant's Liability on Plaintiff's Claim.

Plaintiff and Defendant agree that (1) there was a legally-enforceable contract between them, (2) Defendant at some point in time signed the LSA, and (3) Defendant was obligated to pay Plaintiff the amount of fees and costs specified in the LSA if Plaintiff successfully obtained a loan modification for Defendant. The main point of disagreement between them is Defendant's contention that, in view of his conversation with Plaintiff's employee Phil Alvarez, he was obligated to pay Plaintiff only if Plaintiff was successful in obtaining a loan modification. Implied, although not explicitly stated in Defendant's argument, is the assumption that Mr. Alvarez's promises override and take precedence over very clear explicit provisions in the LSA

1 that Defendant owed the fees irrespective of whether Plaintiff was successful in
2 obtaining a loan modification.

3 Neither party called Mr. Alvarez as a witness at trial.

4 The Court regards Defendant's testimony concerning his conversation
5 with Mr. Alvarez as not credible for the following reasons. Defendant had a copy of the
6 LSA as of approximately mid-February 2015. The LSA clearly provided in plain non-
7 legalese terms that (a) there were no guarantees Plaintiff would be successful in
8 obtaining a loan modification, (b) the Plaintiff's fees and costs were payable
9 irrespective of whether a loan modification was obtained, and (c) in terms of the timing
10 of the required payment, payment was due upon obtaining the loan modification or
11 upon rejection of the loan modification by the lender. Despite these clear provisions,
12 Defendant did not object orally or in writing to the LSA's terms in this regard after
13 receiving the LSA. Instead, he signed the LSA about 12 hours after receiving it (and
14 personally initialed each and every page, including the page stating the fees and
15 expenses were payable irrespective of outcome). Nor did he object orally or in writing
16 in June 2015 when a copy of the LSA signed by Mr. Vokshori on Plaintiff's behalf was
17 sent to him. And, most persuasive of all, he did not object orally or in writing at the
18 time of his October 3, 2015 email to Anhel Farias in which he expressed extreme
19 dissatisfaction with the manner in which events were proceeding. These repeated
20 failures to object to a highly material term of the LSA create a strong inference that he
21 knew all along he had to pay even if a loan modification failed and that the purported
22 conversation with Mr. Alvarez is a long-after-the-fact concoction devised as part of a
23 last-ditch effort to escape liability for fees and costs he had agreed to pay.

24 The Court is strengthened in this conclusion by the highly contradictory
25 nature of Defendant's testimony at trial. At one point during the trial Defendant testified
26 that he signed the LSA digitally on February 20, 2015.⁸ A few minutes later he testified
27 he signed it on June 1, 2015.⁹ Having observed his demeanor, the Court concludes
28 Defendant's testimony concerning the statement purportedly made by Mr. Alvarez that

⁸ RT at page 98, lines 12-15.

⁹ RT at page 100, lines 16-17.

1 he did not have to pay if a loan modification was not obtained simply is not credible.

2 Plaintiff's trial witness Nadia Sommereyns testified to Plaintiff's ironclad
3 business practice of emphasizing to prospective clients that no results were
4 guaranteed and that fees and expenses were payable irrespective of whether a loan
5 modification was obtained or not.¹⁰ The Court regards this testimony as credible and
6 concludes that it supports the conclusion that Mr. Alvarez never made the statements
7 attributed to him by Defendant to the effect that fees and expenses were payable only
8 if a loan modification was obtained.

9 Defendant further contends that the LSA did not go into effect in mid-
10 February 2015 but instead in June 2015 when Mr. Vokshori signed it. Even if this is
11 true, it does not alter the fact that the LSA provides that fees and expenses are
12 payable without regard to the outcome of Plaintiff's loan modification efforts.

13 For these reasons, the Court concludes that the LSA controls the terms of
14 contract between the parties and that no provision of that contract relieves Defendant
15 of the obligation to pay Plaintiff's fees and expenses even if loan modification efforts
16 failed. Thus, Defendant is indebted to Plaintiff in the amount of \$3,894.00 plus, if
17 applicable, attorneys' fees.

18 **2. Exception to Discharge.**

19 11 U.S.C. § 523(a)(2)(A) excepts from discharge any debt for services to
20 the extent obtained by false pretenses, a false representation or actual fraud. The
21 creditor bears the burden of demonstrating by a preponderance of the evidence each
22 of the following five elements: (1) misrepresentation, fraudulent omission or deceptive
23 conduct by the debtor; (2) knowledge of the falsity or deceptiveness of the
24 representation or omission; (3) an intent to deceive; (4) the creditor's justifiable reliance
25 on the representation or conduct; and (5) damage to the creditor proximately caused
26 by reliance on the debtor's representations or conduct. *Ghomeshi v. Sabban (In re*
27 *Sabban)*, 600 F.3d 1219, 1222 (9th Cir. 2010); *Oney v. Weinberg (In re Weinberg)*, 410
28 B.R. 19, 35 (9th Cir. BAP 2009).

¹⁰ RT at page 73, lines 10-18.

1 Numbered paragraph 4 of the LSA states “CLIENT agrees to pay a
2 discounted flat fee of \$2400 for this representation . . .” and that “CLIENT shall pay an
3 ongoing flat monthly ‘maintenance’ fee of \$249” in the event the representation
4 exceeds four months. The Court interprets these provisions as both covenants and
5 representations.¹¹ A person who enters into a contract and promises to pay the other
6 contracting party impliedly represents that he has the present intention of paying and if
7 he or she does not have this present intention there is a misrepresentation. Defendant
8 was not only promising to pay, he was representing that he would pay if required to do
9 so under the LSA’s terms.¹² This representation was false because, as discussed in
10 greater detail below, Defendant had no intention of paying Plaintiff at the time the LSA
11 took effect (whether in February 2015 as contended by Plaintiff or in May/June 2015 as
12 contended by Defendant) in the event Plaintiff was unsuccessful in getting the Bank of
13 America loan on the Riverside Property modified.

14 An alternative analysis, which the Court also adopts, is that Defendant
15 made a fraudulent omission by not telling Plaintiff that he had no intention of paying if
16 loan modification efforts were unsuccessful. The omission is fraudulent in view of his
17 express written promise to pay irrespective of whether loan modification efforts were
18 successful.

19 Defendant strenuously argues that he intended all along to pay Plaintiff if
20 the loan was modified and that he understood the deal to be that no payment would be
21 due if the loan modification failed (basing this on the conversation with Mr. Alvarez).
22 Thus, he did not know he was making a misrepresentation and, in any event, had no
23 intent to deceive Plaintiff. The Court rejects these arguments largely for the reasons
24 already discussed above. The facts that Defendant received a full copy of the LSA via
25 DocuSign at about 2:00 p.m. on February 19, 2015, that he had about 12 hours to
26

27 ¹¹ See *Arciniega v. Clark (In re Arciniega)*, BAP No. CC-15-1123-KiGD, 2016 Bankr. LEXIS 343 (9th Cir.
28 BAP Feb. 3, 2016) (debtor’s contractual promise to “take all necessary measures to pay off the
 existing VA loan” interpreted as a representation).

¹² An alternative analysis, reaching the same end point result, is that a person who promises to do x
 makes a fraudulent omission if, at the time he or she promises to do x, he or she has no intention
 of doing x. In any event, it is clear that a promise made with a positive intent not to perform or
 without a present intent to perform satisfies 11 U.S.C. § 523(a)(2)(A). *Rubin v. West (In re*
 Rubin), 875 F.2d 755, 759 (9th Cir. 1989).

1 review it before signing it on February 20, 2015 at 1:28 a.m., that he initialed each and
2 every page, that the LSA provision requiring payment irrespective of success or failure
3 is placed immediately below the LSA provisions describing the fees due (people
4 signing contracts generally look at the provisions describing how much they are
5 required to pay, even if they look at little else), and that he never orally or in writing
6 complained about the disparity between the LSA's terms and what he was supposedly
7 promised by Mr. Alvarez even when he was extremely unhappy with Plaintiff's
8 performance under the LSA all lead to the conclusion that he well knew at the time he
9 signed the LSA and initialed each page that he would have to pay even if LSA was
10 unsuccessful and that he intended to deceive Plaintiff about his intentions so that they
11 would exert their efforts and try to get his loan modified. Additionally, Defendant's
12 statement in the October 3, 2015 email "[a]fter my modification goes through I'm filing
13 bankruptcy so feel free to charge me anything you want for something you guys
14 haven't done" shows that he had no intention of paying Plaintiff at that time, and this is
15 some evidence that he likewise had no intention of paying Plaintiff at any time unless a
16 loan modification was obtained.¹³ Accordingly, the second and third of the five
17 requirements described above are satisfied.

18 The fourth element of fraud as an exception to discharge requires that the
19 bankruptcy court find that the creditor justifiably relied on a debtor's false statements or
20 misrepresentations. *Field v. Mans*, 516 U.S. 59, 74-75, 116 S. Ct. 437 (1995).
21 Justifiable reliance is measured on a subjective standard, which turns on a person's
22 knowledge under the particular circumstances. *Citibank (South Dakota), N.A. v.*
23 *Eashai (In re Eashai)*, 87 F.3d 1082, 1090 (9th Cir. 1996). Reliance can be presumed
24 where the fraud primarily involves omissions. *Bershadskiy v. Rodeo Realty, Inc. (In re*
25 *Bershadskiy)*, BAP No. CC-12-1452-TaKuKi, 2013 Bankr. LEXIS 4597 (9th Cir. BAP
26 Oct. 15, 2013) (unpublished but cited for persuasive value). Because direct proof of
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¹³ The reference to "after my loan modification goes through" may be an inartful way of referring to a loan modification rejection. It also may be a reference to obtaining a loan modification by using a different loan modification services provider. Finally, it may also mean that Defendant as of October 3, 2015 had no intention of paying Plaintiff even if Plaintiff successfully obtained a loan modification for him. None of these interpretations is favorable to Defendant.

1 reliance is difficult, actual reliance may be proven by circumstantial evidence of
2 reliance. *In re Faulk*, 69 B.R. 743, 749 (Bankr. N.D. Ind. 1986).

3 Plaintiff justifiably relied on Defendant's representation in the LSA that he
4 had the intention of paying the amounts due under the LSA irrespective of whether
5 loan modification efforts were successful. The reliance was justifiable because (1)
6 Defendant signed the LSA, (2) Defendant initialed each and every page of the LSA and
7 (3) contemporaneous with these actions, Defendant did not manifest, either orally or in
8 writing, any disagreement with the LSA provision that the obligation to pay was not
9 contingent on successfully obtaining a loan modification.

10 Under the Court's alternative analysis that a fraudulent omission occurred
11 when Defendant failed to inform Plaintiff at the time he signed the LSA that he had no
12 intention of paying if loan modification efforts failed, reliance is presumed and is
13 justifiable for the reasons discussed in the preceding paragraph.

14 The losses proximately caused by Defendant's misrepresentation or
15 fraudulent omission are the amounts due under the LSA.¹⁴ Defendant's counsel
16 conceded as much in closing argument.¹⁵ Based upon the totality of the evidence,
17 there is no doubt that Plaintiff would not have taken this matter on if Defendant had
18 refused to sign the LSA or, alternatively, if Defendant had told Plaintiff that,
19 notwithstanding the LSA, he was not going to pay Plaintiff if the loan modification
20 efforts failed.

21 **3. Alleged Statutory Defenses.**

22 Defendant argues that Plaintiff's alleged failure to comply with the terms of
23 two statutory provisions, California Civil Code section 2944.6 and California Civil Code
24 section 2944.7, fatally undermine Plaintiff's causes of action herein.

25 Section 2944.6 requires any person who offers to perform a loan
26 modification to provide a specific notice to the borrower "prior to entering into any fee
27 agreement with the borrower." The required notice appears in numbered paragraph 15
28 of the LSA.¹⁶ Irrespective of whether the LSA was technically entered into in February

¹⁴ RT at page 32, lines 11-13.

¹⁵ RT at page 129, lines 5-6.

¹⁶ Plaintiff's Exhibit 1 at page 12.

2015 or June 2015, it is clear that Plaintiff complied with section 2944.6 by providing Defendant with the required notice “prior to entering into any fee agreement.”

Section 2944.7 criminalizes any act to claim, demand, charge, collect or receive any compensation for loan modification services until after full performance of the loan modification services. Here, the record shows that Plaintiff did not bill Defendant or attempt in any manner to collect fees from Defendant until after the loan modification request had been rejected by the lender and after full performance of services had occurred. Specifically, the first request for payment appears to have been made in the December 16, 2015 email from Anhel Farias to Defendant. By that time the lender had rejected the modification and Plaintiff had closed out Defendant’s file.¹⁷

Consequently, each of Defendant’s alleged statutory defenses fails.

CONCLUSION

For the reasons stated above, the Court determines that the indebtedness of Defendant to Plaintiff arising from the LSA is excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A). In view of this disposition, the Court does not reach Plaintiff’s arguments under 11 U.S.C. § 523(a)(2)(C).

Plaintiff has proven up a claim of \$3,894.00. If Plaintiff believes this amount should be augmented by attorneys’ fees and expenses pursuant to numbered paragraph 10 of the LSA or under any other provision of law or statute, Plaintiff shall file a pleading supported by one or more declarations advancing such argument on or before November 15, 2016. Defendant may file a reply on or before November 29, 2016, whereupon the Court will review the pleadings and issue an order with respect to this matter.

If Plaintiff elects not to pursue attorneys’ fees and costs, Plaintiff shall lodge a form of judgment within 14 days of the date of entry of this Memorandum Decision and Order.

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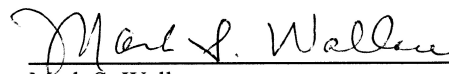
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¹⁷ Defendant’s Exhibit A, page 19.

1 **IT IS SO ORDERED.**

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27 Date: October 19, 2016

28 
Mark S. Wallace
United States Bankruptcy Judge